DOCUMENT RESUME

ED 380 925 EC 303 799

TITLE	Rights and Responsibilities of Faculty Concerning Students with Disabilities. Creating Employment Opportunities Project.
INSTITUTION	Missouri Univ., Columbia. Dept. of Special Education.
SPONS AGENCY	Office of Special Education and Rehabilitative Services (ED), Washington, DC.
PUB DATE	94
CONTRACT	H078C20011-92
NOTE	17p.; A product of the Center for Innovations in Special Education.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Assistive Devices (for Disabled); Civil Rights; Civil Rights Legislation; College Students; *Compliance (Legal); *Disabilities; Educational Legislation; Federal Legislation; Higher Education; Inclusive Schools; *Student Personnel Services; *Teacher Responsibility; *Teacher Rights
IDENTIFIERS	Americans with Disabilities Act 1990; Missouri; Rehabilitation Act 1973 (Section 504)

ABSTRACT

This booklet addresses responsibilities and rights of faculty interacting with postsecondary students who have disabilities and the legislation determining those responsibilities and rights. It focuses on the requirements of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. For each of the two laws, definitions are provided and the role of the compliance coordinator is outlined. The booklet discusses the issue of confidentiality in dealing with disability-related information, the instructor's right to discuss concerns about academic adjustments with the Disabled Student Service provider, the issue of "special privileges," the instructor's responsibility to make the classroom environment open to students with disabilities, payment for auxiliary aids and services, responsibilities concerning field trips and outside programs, personal consequences if instructors do not provide the accommodations requested, and common tips on disability etiquette. A list of six national resource organizations and three Missouri resource organizations concludes the booklet. (JDD)

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Rights and Responsibilities of Faculty Concerning Students With Disabilities

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This document was supported by a grant from from the U.S. Department of Education, Office of Special Education Rehabilitation Services (OSERS), Project #H078C20011-92. However, the opinions expressed herein do not necessarily reflect the position or policies of the funding agency or host institution.

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1994

Responsibilities and Rights of Faculty Concerning Students with Disabilities

INTRODUCTION

This handbook was designed to assist faculty in interacting with students with disabilities at the postsecondary level. It addresses legislation and the responsibilities and rights of faculty.

This handbook provides general information to assist faculty. Any opinions or interpretation in the document are those of the author and do not necessarily reflect the views of the enforcing agencies.
This document is intended to assist postsecondary faculty in understanding and implementing the requirements of the ADA and Section 504 of the Rehabilitation Act. While every effort has been made to insure completeness and accuracy, this is not a legal document nor does it purport to offer legal advice or a legal opinion.

LEGISLATION

***** What legislation covers higher education institutions?**

The Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990 both cover colleges and universities. The Rehabilitation Act is discussed first.

The Rehabilitation Act

Title V of The Rehabilitation Act of 1973 is generally regarded as the first civil rights legislation for people with disabilities on the national level.

Section 504 of the Rehabilitation Act is a program access statute. It prohibits discrimination on the basis of disability in any program or activity offered by an entity or institution receiving federal funds. Since 1977, all institutions receiving federal funding must be prepared to provide appropriate academic adjustments and reasonable modifications to policies and practices for people with disabilities.

Section 504 states (as amended):

"No otherwise qualified person with a disability in the United States . . . shall, solely on the basis of disability, be denied access to, or the benefits of, or be subjected to discrimination under any program or activity provided by any institution receiving federal financial assistance."

DEFINITION OF A DISABILITY

Section 504 defines a person with a disability as:

- A person is considered to be a person with a disability if he/she is someone with a physical or mental impairment that substantially limits one or more major life activities.
- A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.

SECTION 504 COORDINATOR

Under Section 504, institutions were required to appoint and maintain at least one person to coordinate its efforts to comply with the requirements of Section 504 (Section 504 Coordinator). This individual or office has the ongoing responsibility of assuring that the institution/ agency/organization practices nondiscrimination on the basis of disability and should be included in any grievance

procedures developed to address possible instances of discrimination brought against the institution.

The Americans with Disabilities Act (ADA)

The ADA is a federal civil rights statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.

Universities are covered in many ways under the ADA. Employment is addressed by Title I, accessibility provided by public and private entities by Titles II and III and miscellaneous items by Title V.

ADA COORDINATOR

The ADA requires institutions to designate an ADA Coordinator. This person may be the same person who is the Section 504 Coordinator.

REMEMBER: Private institutions are covered under Title III.

DEFINITION OF A PERSON WITH A DISABILITY:

Under the ADA, a person with a disability is someone with a physical or mental impairment that substantially limits one or more major life activities. A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.

Under both Section 504 and the ADA, the term "auxiliary aids and services" include: qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, qualified readers, taped text, braille materials,

acquisition or modification of equipment or devices, or other similar services and actions.

We will focus on Section 504 of the Rehabilitation Act of 1973, as well as address Titles II and III of the ADA.

*** **How does the ADA relate to Section 504?**

Institutions that receive federal funds are covered under Section 504. The ADA does not supplant Section 504, but, in those situations where the ADA provides greater protection, the ADA standards apply.

*** **What are the implications for higher education institutions?**

1. Students with disabilities must be afforded an equal opportunity to participate in and benefit from all postsecondary education programs and activities. That includes any course, course of study, or activity offered.

2. Rules which would limit the student with disabilities from fully participating in a program or activity may not be imposed.

3. Academic requirements must be modified, on a case-by-case basis, to afford qualified students with disabilities an equal education opportunity.

RIGHTS

*** **Do I have the right to know what type of disability a student has when they ask for an accommodation?**

No. A student does not have to inform the faculty member

about their disability, but only the needed accommodations. If you have a question regarding the need for the accommodation, then you as a faculty member, may contact your Disabled Student Service (DSS) provider. They should have documentation regarding the student's disability on file.

They cannot give details about the disability, unless the student has signed a written consent form, but can inform you if the student has a documented disability and if the academic adjustment requested is appropriate. The student may disclose their disability to you. You are then obligated to maintain confidentiality regarding the student's disability.

It is important to remember that the confidential nature of disability-related information has been an over-arching principle of nondiscrimination since Section 504.

***** What can I do if I disagree with the academic adjustment requested?**

If you disagree with the academic adjustment requested, you should discuss your disagreement with the DSS provider, but you should continue to provide the academic adjustment. An instructor may not forbid a student's use of an aid if that prohibition limits the student's participation in the school program. Section 504 states:

> "A recipient may not impose upon handicapped [sic] students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus building, that have the effect of limiting the participation of handicapped [sic] students in the recipient's education program or activity."

Many times faculty members are concerned with the use of a tape recorder in their classroom because it may infringe on their freedom of speech or potential copyrighted material. The instructor may ask the student to sign an agreement that states:

"I understand that, as a student enrolled at the institution who has a disability that affects my ability to take or read notes, I have the right to tape record my class lectures for use in my personal studies only. I realize that lectures taped for this reason may not be shared with other people without the written consent of the lecturer. I also understand that tape recorded lectures may not be used in any way against the faculty member, other lecturer, or students whose classroom comments are taped as part of the class activity. I am aware that the information contained in the tape recorded lectures is protected under federal copyright laws and may not be published or quoted without the expressed consent of the lecturer and without giving proper identification and credit to the lecturer. I agree to abide by these guidelines with regard to any lectures I tape while enrolled as a student at the institution."

It is important to remember that under the ADA, if appropriate academic adjustments are not provided to the student, you, as well as the institution, can be held liable for monetary damages.

*** **Does the student receive "special privileges" under this legislation?**

No. Providing accommodations should not be regarded as giving students "special privileges", but rather as minimizing the impact of the student's disability to the greatest extent possible. Institutions are not required to make changes in

require a major or substantial change in an essential element of the curriculum. The institution has the right to set academic standards, but the institution must prove that a requested change would create a substantial change. The burden of proof lies with the institution.

It is important that the students be treated the same and be allowed to fail. This is important in their educational experience and may give the student an opportunity to learn from the experience. The legislation does not intend that institutions pass students because they have a disability and they feel sorry for them, and it is important to expect the same academic performance, with requested accommodation, from the student with a disability as from a student without a disability.

*** **Does the student with a disability need to ask for academic adjustments in a certain time frame prior to classes?**

Yes. Most institutions require the student indicates the need for an accommodation with a reasonable advance time. This is not always possible but it is important to provide the academic adjustments as soon as possible.

RESPONSIBILITIES

*** **What can I do to make the classroom environment open to students with disabilities?**

There are many of us that have had little or no contact with people with disabilities. It is important to remember that people with disabilities are just that—people first. Here are a few easy to remember tips:

1. Make a general announcement regarding the availability of accommodations at the beginning of class. Most institutions require a statement on all syllabi regarding requests for accommodations. To make a statement or discuss their needs, students should contact the DSS office.

2. Ask questions. The student is the best source of information.

3. Don't label or stereotype. Not everyone who has a disability is the same. It is important to look at the person first and not lump everyone together in the same category. This is also important when addressing accommodations. Not all students with a learning disability will want extended time, not all people with a visual impairment will need braille. Everyone is an individual with individual needs.

4. Follow the basic disability etiquette found at the end of this handbook.

*** **How do I know what type of academic adjustment a student needs?**

It is up to the student and the DSS office to determine what type of accommodation is needed. If you question the accommodation, contact the DSS office.

There is not one type of accommodation for all students with disabilities. Each accommodation must be decided on a case-by-case basis. Some common accommodations are:

taped texts	note takers
readers	student tutors
oral tests	extended test time
interpreters	large print materials

*** **Do I also have to provide these services to international students with disabilities who need auxiliary aids or services?**

Yes. International students are entitled to the same protection from nondiscrimination on the basis of disability as are U.S. citizens. Section 504 states the prohibition of discrimination covers any "otherwise qualified person with a disability in the United States." Section 504 does not state the student has to be a citizen of the United States.

*** **Who pays for these academic adjustments?**

Each institution is responsible for the provision of appropriate auxiliary aids and services at no cost to the student. Each institution may determine which department pays for a particular accommodation. The institution cannot place a limit on its expenditure for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist. The institution may work with an outside agency, such as Vocational Rehabilitation (VR), to assist in obtaining reimbursement for the cost of the item or service.

*** **What if I am unsure how to handle a situation with a student with a disability?**

First ask the student. He/she is the best source of information about their disability. Second, contact the DSS office or another office that acts as a resource for students with disabilities.

*** **What are my responsibilities concerning field trips and outside programs?**

The legislation is very explicit about this. Persons with

disabilities are entitled to participate in the most integrated settings possible. If a teacher conducts field trips or special programs, accommodations must be offered. If an institution offers transportation to students going on a field trip, it must offer accessible transportation for students with disabilities. For example, a student, who uses a wheelchair, is enrolled in your class, and you decide to use a college van to take the students to a museum. You must offer accessible transportation to the student with a disability. The student may accept or refuse the accessible transportation.

*** **What are possible personal consequences if I do not provide the accommodation requested?**

If a student is denied auxiliary aids or services, they can file a complaint under Section 504 with the Office for Civil Rights of the U.S. Department of Education or under the ADA Titles II and III which is under the jurisdiction of the Department of Justice. The student may file with both offices if they so desire. Under ADA, monetary damages may be enforced and the student may name both an individual, such as a professor, and the institution in the complaint. You as a professor are personally liable, as well as the institution, if named in the complaint.

*** **Do I have to provide academic adjustments if the student is taking the class for an audit?**

Yes. The legislation states any student with a disability is eligible for all services if the institution receives federal assistance.

Common tips on disability etiquette:

Treat adults as adults. Don't patronize people who use wheelchairs by patting them on the head.

Don't assume a person with a disability needs help, ASK FIRST. Also, listen to instructions the person gives.

Talk to the person with a disability, not their friend or family member.

Relax. Don't worry if you use the term "See you later" to a person with a visual impairment or "I have to be running" to a person who uses a wheelchair.

To get the attention of a person who is deaf or hard of hearing, tap them on the shoulder or wave your hand. Look directly at the person and speak clearly. Not all people with hearing loss read lips. Remember to speak directly to the person with a hearing loss, not their interpreter.

When talking for a long period of time with a person who uses a wheelchair, put yourself at eye level so they do not have to strain their neck to look up.

Don't hang on a person's wheelchair. That is part of their personal space.

Use "person first" language. Examples include: person with a disability, student with a learning disability, or student who is deaf. Do not use the term "handicapped" when referring to a person with a disability. Many people find that term offensive. A handicap refers to a physical or attitudinal barrier.

REMEMBER: The number one tip on how to treat a person with a disability is:

LIKE A PERSON

*** **What resources are available to assist me?**

Below is a list of possible resources to assist in your job search:

National Resources

Office on the ADA
Civil Rights Division
P.O. Box 66118
U.S. Department of Justice
Washington, DC 20035-6118

Equal Employment
Opportunity Commission
1801 L Street, NW
Washington, DC 20507
(202) 663-4900 (V)
(800) 800-3302 (TDD)

Architectural &
Transportation
Barriers Compliance Board
1111 18th Street NW
Ste. 501
Washington, DC 20036
(800) USA-ABLE (V/TDD)

Federal Communications
Commission (FCC)
1919 M Street NW
Washington, DC 20554
(202) 632-7260 (V)
(202) 632-6999 (TDD)

Department of Transportation
400 Seventh Street NW
Washington, DC 20590
(202) 366-9305 (V)
(202) 755-7687 (TDD)

Job Accommodation Network
(JAN)
(800) 526-7234

Regional Resources

Missouri Assistive
Technology Project
4731 South Cochise
Ste. 114
Independence, MO 64055-
6975
(800) 647-8557 (V)
(800) 647-8558 (TDD)

The ADA Project
4816 Santana Circle
Columbia, MO 65203
(314) 882-3600 (V/TDD)
(800) 949-4232 (V/TDD)

Governor's Council on
Disability
3315 W. Truman Boulevard
Jefferson City, MO 65109
(314) 751-2600 (V/TDD)
(800) 877-8249 (V/TDD)

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